



**COUNTY OF LOS ANGELES
DEPARTMENT OF BEACHES AND HARBORS**



April 4, 2002

STAN WISNIEWSKI
DIRECTOR

KERRY GOTTLIEB
CHIEF DEPUTY

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, CA 90012

Dear Supervisors:

**APPROVAL OF NEGOTIATED RENTAL RATES
AMENDMENT NO. 14 TO LEASE NO. 9427 – PARCEL 28W (MARINERS BAY)
MARINA DEL REY
(FOURTH DISTRICT)
(3 VOTES)**

IT IS RECOMMENDED THAT YOUR BOARD:

1. Find this proposed Lease Amendment No. 14 to Lease No. 9427 is categorically exempt under the California Environmental Quality Act pursuant to class 1(r) of the County's Revised Environmental Document Reporting Procedures and Guidelines.
2. Approve and authorize the Chairman of the Board to sign the attached Lease Amendment No. 14 to Lease No. 9427. The Amendment reflects a negotiated settlement based on current market conditions to: (a) effect a revised minimum rent of \$62,343.66 per month with subsequent adjustments; (b) effect the following percentage rents: boat slips, 25%; apartments, 10.5%; office rents, 12.5%; liveaboard, 25%; (c) waive interest owed by the County to the lessee on rent overpayments; and, (d) adjust commercial general liability insurance to a combined single limit of \$1 million per occurrence and \$5 million aggregate.

PURPOSE OF RECOMMENDED ACTION

All Marina del Rey leases provide for the periodic review of leasehold rents and liability insurance coverage to ensure that the rental rates payable to the County are maintained at current fair market levels and that the amount of general liability insurance is adequate to protect the County's interests. County rents are typically computed as the greater of either a fixed minimum rent or the total of varying percentages of the lessee's gross receipts from the leasehold's uses.

Based on our contract appraiser's recommendation, we have negotiated to establish the following percentage rents, which are to be in effect for the 10-year period ending May 10, 2010:

	<u>Proposed Rates per Appraisal</u>	<u>Current Rates</u>
• Boat Slip Rentals (A)	25%	28%
• Apartments (C1)	10.5 %	11%
• Office Rents (C7)	12.5%	11%
• Liveaboard (C9)	25%	28%

These proposed rental rates are consistent with the general prevailing rates at other Marina del Rey leaseholds and at other Southern California marinas. Also, based on the appraisal, all other categories of percentage rents applicable to this lease will remain unchanged.

Based on average gross receipts for the immediate three years preceding this rent adjustment effective date, minimum rent will be adjusted from \$64,601.65 to \$62,343.66 per month. Consistent with the recommendation contained in our appraisal, the minimum rent will be adjusted on May 11, 2003, May 11, 2006 and May 11, 2009 to an amount equaling 75% of the average annual rent paid by the lessee to the County over the prior three years.

The lessee has agreed to provide commercial general liability insurance on the leasehold with a combined single limit of \$1 million per occurrence and \$5 million aggregate, as recommended by the Chief Administrative Office's Risk Manager.

JUSTIFICATION

The negotiated percentage and minimum rentals in the attached Lease Amendment are based on our contract appraisal of the leasehold. The liability insurance minimum is consistent with the County Risk Manager's recommendation.

FISCAL IMPACT

Based on lessee's Fiscal Year 2000-2001 gross receipts of \$8,385,309, the annual rents due the County in the first year after the adjustment are projected to be \$1,054,033, a decline of \$80,605 or less than 1% of the gross receipts.

The Retroactive Rent & Interest provision in the Lease Amendment provides for the waiver of interest owed by the County to lessee due to lessee's overpayment of percentage rent based upon its existing higher rates. Had this interest waiver provision not been negotiated, the County would have owed lessee an additional amount of approximately \$16,700. The credit balance on overpaid principal amounts of rent due to the lessee shall be deducted from future monthly percentage rentals due the County.

FINANCING

Not applicable.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

Parcel 28, commonly known as Mariners Bay, is improved with 369 boat slips and 379 apartment units. The leasehold occupies 8.5 acres of land and 10.15 acres of water in Marina del Rey. The 56-year and 9-months ground lease between the County and the lessee's predecessor-in-interest was executed in 1965.

This Lease Amendment No. 14 has been approved by County Counsel as to form. On the 10th day of April 2002, the Small Craft Harbor Commission endorsed the Director's recommendation to approve the execution of the Lease Amendment.

CONTRACTING PROCESS

Not applicable.

IMPACT ON CURRENT SERVICES (OR PROJECTS)

Not applicable.

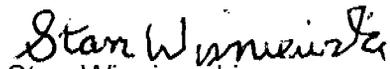
NEGATIVE DECLARATION/ENVIRONMENTAL IMPACT REPORTS

This proposed Lease Amendment No. 14 is categorically exempt under provisions of the California Environmental Quality Act pursuant to class 1 (r) of the County's Environmental Document Reporting Procedures and Guidelines.

CONCLUSION

Authorize the Executive Officer of the Board of Supervisors to send two copies of the Parcel 28 executed Lease Amendment to the Department of Beaches and Harbors.

Respectfully submitted,



Stan Wisniewski
Director

Attachment

c: Chief Administrative Officer
County Counsel
Auditor-Controller

AMENDMENT NO. 14 TO LEASE NO. 9427

PARCEL NO. 28W - MARINA DEL REY SMALL CRAFT HARBOR

READJUSTMENT OF RENT

THIS AMENDMENT TO LEASE is made and entered into this _____ day of _____, 2002 (the "Effective Date").

BY AND BETWEEN

COUNTY OF LOS ANGELES
hereinafter referred to as "County",

AND

MARINERS BAY COMPANY, a limited
partnership, hereafter referred to as "Lessee".

WITNESSETH:

WHEREAS, Lessee and County entered into Lease No. 9427 under the terms of which County leased to Lessee's predecessors in interest that certain real property located in the Marina del Rey Small Craft Harbor, County of Los Angeles, State of California, now commonly known as Parcel 28W, which leasehold premises (the "Premises") are more particularly described in Exhibit "A" attached to and incorporated in said lease, as amended (the lease and all amendments are collectively hereafter referred to as the "Lease"); and

WHEREAS, Section 15 of said Lease provides that as of May 11 of every tenth (10th) year thereafter (the "Rental Adjustment Date"), the square foot rental, all categories of percentage rentals and liability insurance requirements (collectively, the "Adjusted Rentals") shall be readjusted by Lessee and County in accordance with the standards established in said Section 15; and

WHEREAS, Section 15 further provides that such readjustments shall be accomplished by agreement of the parties and, in the event such agreement cannot be reached, the readjustments shall be settled by binding arbitration in the manner set forth at length in said Section 15; and

WHEREAS, the parties hereto have reached agreement with respect to the Adjusted Rentals which are to apply for the ten (10) year period commencing on May 11, 2000 (the "2000 Rental Adjustment Date"); and

NOW, THEREFORE, in consideration of the mutual agreements, covenants and restrictions contained herein, the parties, and each of them, agree as follows:

1. **SQUARE FOOT RENTAL.** Commencing as of the 2000 Rental Adjustment Date, the first Paragraph of Section 12 (SQUARE FOOT RENTAL) of said Lease is deemed amended to read as follows:

"As of May 11, 2000, the annual square foot rental for the whole of the Premises shall be \$748,124. The annual square foot rental shall be adjusted on May 1 of every third year thereafter (the "Square Foot Adjustment Date") to the amount that equals 75% of the average annual total rents payable to the County by Lessee under the Lease during the preceding three year period."

2. PERCENTAGE RENTALS. Commencing as of the 2000 Rental Adjustment Date, the following subsections are substituted for the corresponding subsections in Section 13 (PERCENTAGE RENTALS) of said Lease:

"(a) TWENTY-FIVE Percent (25%) of gross receipts from the rental or other fees charged for the use of boat slips, anchorages, moorings, dockside gear lockers, dockside storage space, and such other facilities and services ancillary thereto as are generally provided in common to tenants (collectively, "Boat Slip Rentals")."

"(c)(i) TEN AND ONE-HALF Percent (10.5%) of gross receipts or other fees" charged for occupancy of apartments ("Apartments")."

"(c)(iii) TWELVE AND ONE-HALF Percent (12.5%) of gross receipts from rental or other fees charged for the occupancy of offices utilized for banking, financial or investment activities, internal clerical or administrative activities of business enterprises, real estate and insurance brokerage, legal, medical, engineering, travel agencies, or similar professional services (collectively, "offices"), but not to include, however, stores, shops or other commercial establishments, the gross receipts pertaining to which are subject to percentage rentals and specifically required to be reported under other subsections of this Section."

"(c)(iv) TWENTY-FIVE Percent (25%) of gross receipts from rental or other fees charged for boat owners who live on their boats ("Liveaboard Charges")."

3. RETROACTIVE RENT & INTEREST. As a result of the rental adjustments provided for in this Amendment No. 14, there will be a credit balance due the Lessee representing the difference between (i) the percentage rents payable by Lessee under the rental rates in effect prior to the effectiveness of this Lease Amendment from the 2000 Rental Adjustment Date to the Effective Date, and (ii) the sum which is calculated to be due for percentage rents from the 2000 Rental Adjustment Date to the Effective Date based upon the rental rates as adjusted in Section 2 of this Lease Amendment (the "Credit Balance"). Lessee shall deduct the Credit Balance from future monthly percentage rentals due the County, commencing after the Effective Date of this Lease Amendment until the full Credit Balance is reduced to zero. Notwithstanding anything to the contrary contained in Section 15 of the Lease, both parties mutually agree to waive the interest that may otherwise be owed by the County to Lessee on the Credit Balance.

4. INDEMNITY CLAUSE AND CASUALTY NSURANCE. Commencing as of the Effective Date, the second paragraph of Section 26 (INDEMNITY CLAUSE AND CASUALTY INSURANCE) of said Lease is deleted and the following substituted therefor:

"Lessee shall maintain in full force and effect during the term of this Lease comprehensive general liability insurance to be written on a commercial general liability policy form CG 00 01 or its equivalent covering the hazards of premises/operations, contractual, independent contractors, advertising, product/completed operations, broad form property damage and personal injury with a combined single limit of not less than \$1,000,000 per occurrence and \$5,000,000 aggregate. The County and the Board of Supervisors, their officers, agents and employees shall be named as additional insureds under such liability insurance policy or policies."

5. MISCELLANEOUS. Except as herein specifically amended, all terms, conditions and provisions of the Lease shall be and continue to remain in full force and effect and are unmodified, and each of the parties hereto reaffirms and reacknowledges its respective obligations under the Lease, as amended hereby.

IN WITNESS WHEREOF, County has, by order of its Board of Supervisors, caused this Amendment to Lease to be subscribed by the Chairman of said Board and attested by the Executive Office of the Board, and the Lessee has executed the same.

LESSEE:
MARINERS BAY COMPANY, a limited partnership

COUNTY:
COUNTY OF LOS ANGELES

By: Memphis Management Company, Inc.,
a California corporation, General Partner

By: _____
Chairman, Board of Supervisors

By: Cathleen Hayes
Cathleen Hayes, Executive Vice President
By: _____

ATTEST:
Violet Varona-Lukens, Executive Officer
Of the Board of Supervisors

By: _____
Deputy

APPROVED AS TO FORM:
Lloyd W. Pellman, County Counsel

By: Lloyd W. Pellman
Deputy

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WHEREAS, Section 15 of said Lease provides that as of May 11 of every tenth (10th) year thereafter (the "Rental Adjustment Date"), the square foot rental, all categories of percentage rentals and liability insurance requirements (collectively, the "Adjusted Rentals") shall be readjusted by Lessee and County in accordance with the standards established in said Section 15; and

WHEREAS, Section 15 further provides that such readjustments shall be accomplished by agreement of the parties and, in the event such agreement cannot be reached, the readjustments shall be settled by binding arbitration in the manner set forth at length in said Section 15; and

WHEREAS, the parties hereto have reached agreement with respect to the Adjusted Rentals which are to apply for the ten (10) year period commencing on May 11, 2000 (the "2000 Rental Adjustment Date"); and

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